

ligation subject to the public debt limit established in section 3101 of title 31, United States Code.”

#### TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of Title 12, Banks and Banking.

#### CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 103-202 provided that: “The Congress finds that—

“(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers;

“(2) the fair and honest treatment of investors will strengthen the integrity and liquidity of the government securities market;

“(3) rules promulgated by the Secretary of the Treasury pursuant to the Government Securities Act of 1986 [see Short Title of 1986 Amendment note set out under section 78a of this title] have worked well to protect investors from unregulated dealers and maintain the efficiency of the government securities market; and

“(4) extending the authority of the Secretary and providing new authority will ensure the continued strength of the government securities market.”

Section 1(b) of Pub. L. 99-571 provided that: “The Congress finds that transactions in government securities are affected with a public interest which makes it necessary—

“(1) to provide for the integrity, stability, and efficiency of such transactions and of matters and practices related thereto;

“(2) to impose adequate regulation of government securities brokers and government securities dealers generally; and

“(3) to require appropriate financial responsibility, recordkeeping, reporting, and related regulatory requirements;

in order to protect investors and to insure the maintenance of fair, honest, and liquid markets in such securities.”

#### STUDY OF REGULATORY SYSTEM FOR GOVERNMENT SECURITIES

Section 112 of title I of Pub. L. 103-202 provided that: “(a) JOINT STUDY.—The Secretary of the Treasury, the Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System shall—

“(1) with respect to any rules promulgated or amended after October 1, 1991, pursuant to section 15C of the Securities Exchange Act of 1934 [15 U.S.C. 78o-5] or any amendment made by this title [amending this section and sections 78c, 78o, 78o-3, 78s, and 78w of this title], and any national securities association rule changes applicable principally to government securities transactions approved after October 1, 1991—

“(A) evaluate the effectiveness of such rules in carrying out the purposes of such Act [15 U.S.C. 78a et seq.]; and

“(B) evaluate the impact of any such rules on the efficiency and liquidity of the government securities market and the cost of funding the Federal debt;

“(2) evaluate the effectiveness of surveillance and enforcement with respect to government securities, and the impact on such surveillance and enforcement of the availability of automated, time-sequenced records of essential information pertaining to trades in such securities; and

“(3) submit to the Congress, not later than March 31, 1998, any recommendations they may consider appropriate concerning—

“(A) the regulation of government securities brokers and government securities dealers;

“(B) the dissemination of information concerning quotations for and transactions in government securities;

“(C) the prevention of sales practice abuses in connection with transactions in government securities; and

“(D) such other matters as they consider appropriate.

“(b) TREASURY STUDY.—The Secretary of the Treasury, in consultation with the Securities and Exchange Commission, shall—

“(1) conduct a study of—

“(A) the identity and nature of the business of government securities brokers and government securities dealers that are registered with the Securities and Exchange Commission under section 15C of the Securities Exchange Act of 1934 [15 U.S.C. 78o-5]; and

“(B) the continuing need for, and regulatory and financial consequences of, a separate regulatory system for such government securities brokers and government securities dealers; and

“(2) submit to the Congress, not later than 18 months after the date of enactment of this Act [Dec. 17, 1993], the Secretary’s recommendations for change, if any, or such other recommendations as the Secretary considers appropriate.”

#### STUDIES AND RECOMMENDATIONS WITH RESPECT TO EXTENSION OF TREASURY AUTHORITY

Section 103 of Pub. L. 99-571 directed Secretary of the Treasury, together with Securities and Exchange Commission and Board of Governors of the Federal Reserve System, to evaluate the effectiveness of the rules promulgated pursuant to 15 U.S.C. 78o-5 in effecting the purposes of this chapter, and shall submit to Congress, not later than Oct. 1, 1990, their recommendation with respect to the extension of the Secretary’s authority under 15 U.S.C. 78o-5 and such other recommendations as they considered appropriate; and directed Comptroller General to conduct a study of the regulation of government securities brokers and government securities dealers pursuant to 15 U.S.C. 78o-5 and the effectiveness of the amendments made by this Act in protecting investors and in effecting the purposes described in 15 U.S.C. 78o-5(b)(2), and submit to Congress, not later than Mar. 31, 1990, his recommendations with respect to the extension of the Secretary’s authority under 15 U.S.C. 78o-5 and such other recommendations as he considered appropriate.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78o, 78u-2, 78y, 78mm, 78lll of this title; title 7 sections 1a, 2; title 26 sections 901, 954.

### § 78p. Directors, officers, and principal stockholders

#### (a) Filing of statement of all ownership of securities of issuer by owner of more than ten per centum of any class of security

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 78l of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of

such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership and such purchases and sales of such security-based swap agreements as have occurred during such calendar month.

**(b) Profits from purchase and sale of security within six months**

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving any such equity security within any period of less than six months, unless such security or security-based swap agreement was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security or security-based swap agreement purchased or of not repurchasing the security or security-based swap agreement sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

**(c) Conditions for sale of security by beneficial owner, director, or officer**

It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person

shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**(d) Securities held in investment account, transactions in ordinary course of business, and establishment of primary or secondary market**

The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 78e of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

**(e) Application of section to foreign or domestic arbitrage transactions**

The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.

**(f) Treatment of transactions in security futures products**

The provisions of this section shall apply to ownership of and transactions in security futures products.

**(g) Limitation on Commission authority**

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 78c-1(b) of this title.

(June 6, 1934, ch. 404, title I, §16, 48 Stat. 896; Pub. L. 88-467, §8, Aug. 20, 1964, 78 Stat. 579; Pub. L. 106-554, §1(a)(5) [title II, §208(b)(3), title III, §303(g), (h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435, 2763A-455, 2763A-456.)

REFERENCES IN TEXT

Section 206B of the Gramm-Leach-Bliley Act, referred to in subsecs. (a), (b), and (g), is section 206B of Pub. L. 106-102, which is set out in a note under section 78c of this title.

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106-554, §1(a)(5) [title III, §303(g)], amended subsecs. (a) and (b) generally, revising provisions to extend application to security-based swap agreements.

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §208(b)(3)], added subsec. (f).

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title III, §303(h)], added subsec. (g).

1964—Subsec. (a). Pub. L. 88-467, §8(a), substituted “registered pursuant to section 78l of this title” for “registered on a national securities exchange”, “Commission (and, if such security is registered on a national securities exchange, also with the exchange)” for “exchange (and a duplicate original thereof with the Commission)”, “a change” for “any change”, and “Commission (and if such security is registered on a national securities exchange, shall also file with the exchange) a statement” for “exchange a statement (and a duplicate original thereof with the Commission)”, and inserted “on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title” after “registration of such security”.

Subsecs. (d), (e). Pub. L. 88-467, §8(b), added subsec. (d) and redesignated former subsec. (d) as (e).

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78c-1, 78j, 78l, 78hh, 79q of this title; title 26 section 83.

### § 78q. Records and reports

#### (a) Rules and regulations

(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 78q-1 of this title.

#### (b) Records subject to examination

##### (1) Procedures for cooperation with other agencies

All records of persons described in subsection (a) of this section are subject at any

time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter: *Provided, however*, That the Commission shall, prior to conducting any such examination of a—

(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

(B) broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o-3(k) of this title gives notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

#### (2) Furnishing data and reports to CFTC

The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 78o(b)(11) of this title, exchange registered pursuant to section 78f(g) of this title, or national securities association registered pursuant to section 78o-3(k) of this title and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

#### (3) Use of CFTC reports

Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if the information available therein is sufficient for the purposes of the examination, of—

(A) any broker or dealer registered pursuant to section 78o(b)(11) of this title;

(B) exchange<sup>1</sup> registered pursuant to section 78f(g) of this title; or

<sup>1</sup> So in original. Probably should be preceded by “an”.